

est in the State Theatre would be inconsistent with and preclude the relief sought by him on his pending appeal to the Court of Appeals for the Third Circuit.

In *Partmar Corporation v. United States*, 338 U. S. 804. (1949), the petitioner was the lessee of the Paramount Theatre in Los Angeles under a lease containing a provision giving Paramount the right to terminate the lease upon cancellation or termination of a franchise agreement under which the lessee agreed to exhibit Paramount pictures for an extended period. The Final Decree in this cause of December 31, 1946 having outlawed franchise agreements of all defendants, Paramount gave notice of termination of the lease and brought an action in the United States District Court in Los Angeles to recover possession of the theatre. Defendant answered, denying Paramount's right to terminate the lease and its right to possession of the theatre. While this action was pending and at issue, the lessee sought to intervene on the hearing in the court below on the Paramount Consent Judgment. The relief sought was that Paramount be required to divest itself of the theatre and also that there be added to the injunction provisions in the consent judgment against franchises "a minor complementary prohibition against dispossessing an innocent lessee by enforcing a condition incident to an exclusive dealing requirement". The petitioner did not complain because his franchise agreement had been rendered unenforceable by the Consent Judgment but sought to have the court below interpose to relieve it from the consequences of its voluntary agreement that Paramount should have the right to terminate the lease upon the happening of such contingency. Moreover the right of Paramount to terminate the lease was being litigated in the action between the parties then pending in Los Angeles. With respect to divestiture of the theatre, petitioner's contention was that

the theatre had been acquired by monopoly practices and that the mandate of this Court on the first appeal of this cause as to divestiture of the theatre interests had not been fully carried out. Questions of public interest only were involved in this contention and the public interest was adequately represented by the Department of Justice.

When thus analyzed, it is clear that these cases are inapposite and are in no wise precedents for the denial of Appellant's motion for leave to intervene.

Conclusion.

It is respectfully submitted that the motion to affirm and the motion to dismiss should be denied and that the order of the Court below denying Appellant's motion to intervene should be reversed.

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